

**REMARKS/ARGUMENTS**

Reconsideration of this application is requested. Claims 167-176 will be active in the application subsequent to entry of this Amendment.

Considering the issues raised in the outstanding Official Action, the applicants have decided to revert to the claims 144-153, with slight revisions, as were presented in the Amendment of February 5, 2004.

Applicants' claims are now directed to the use of a hydrophobic mesoporous silicon implant to deliver a drug to a patient.

New claim 167 is based on claim 144 as filed with the USPTO on February 5, 2004, in combination with the resorbable mesoporous silicon being hydrophobic which is a characteristic based on the description at page 23, lines 13 to 14 of the published PCT application.

In order to advance examination of new claims 167-176 presented above, applicants will address the issues raised in an Official Action of November 5, 2003 in which claims 144-153 were then under examination. The examiner will appreciate that the new claim set presented above is different from that previously examined in that the resorbable mesoporous silicon is required to be hydrophobic, for reasons just explained.

The only prior art document applied in the November 5, 2003 Office Action was WO 97/06101 which is commonly owned with the ownership of the subject application and indeed shares the same common inventor as the present application. It will be referred to hereafter as "WO '101". WO '101 does not describe a drug that is located in the pores of hydrophobic mesoporous silicon. Therefore new claim 167 is novel.

WO '101 describes the erosion of mesoporous silicon (page 12, line 31 to page 13, line 1) which involves wetting of the silicon (page 13, lines 2 to 4). It also describes the formation hydrophilic porous silicon by oxidation of porous silicon (page 4, lines 25 to 28). The porous silicon is oxidized by storage in air for several months (page 9, lines 13 to 17).

This use of samples comprising hydrophilic silicon would lead the skilled person away the use of hydrophobic porous silicon for drug delivery by silicon erosion.

The skilled person would have believed that the use of hydrophobic silicon would reduce interaction between the silicon and its aqueous environment, thereby inhibiting erosion. Erosion

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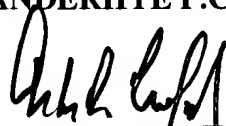
is of course the desired objective of this invention and clearly the skilled person would avoid the use of hydrophobic silicon in these circumstances.

For the above reasons it is respectfully submitted that claims 167-176 define inventive subject matter. Reconsideration, entry of this Amendment and allowance are solicited.

Respectfully submitted,

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